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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/121,781 07/23/98 LAROSA G LKS98-04

HM22/0919

EXAMINER

HELEN E. WENDLER, ESQ.  
HAMILTON BROOK SMITH & REYNOLDS, P.C.  
TWO MILITIA DRIVE  
LEXINGTON MA 02421-4799

SALIMI, A

ART UNIT	PAPER NUMBER
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1648

B

DATE MAILED:

09/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No. 09/121,781	Applicant(s) Larosa G. J.
Examiner ALI R. SALIMI	Group Art Unit 1648

Responsive to communication(s) filed on 7/26/00.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire Three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-52 is/are pending in the application.

Of the above, claim(s) 9-44 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-8 and 45-52 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 4,7

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1648

### **DETAILED ACTION**

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1648.

#### ***Election/Restriction***

Applicant's election with traverse of Group I claims 1-8, 45-52 in Paper No. 12 is acknowledged. The traversal is on the ground(s) that the subject matter of Groups I, II, and III overlap and the search for the said groups would not provide serious burden. In addition, applicants agree that the said inventions are patentably distinct. This is not found persuasive because examination of all groups would be unduly burdensome, the literature search, particularly relevant in this art, is not co-extensive and is much more important in evaluating the burden search. Clearly different searches and issues are involved in the examination of each group. For these reasons the restriction requirement is deemed to be proper.

The requirement is still deemed proper and is therefore made FINAL.

Claims 9-44 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected groups, the requirement having been traversed in Paper No. 12.

**Applicants are reminded to cancel the claims to the non elected claims.**

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-8, 45-52 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lind et al (US Patent No. 6,084,075).

The above cited patent meets the broad limitations of the claims (see the claims). The claims are directed to a product. The product disclosed in the above cited patent appears to be identical or so similar that is indistinguishable from the product claimed by the applicants.

Applicants are reminded that the Patent Office does not have facilities to perform physical comparisons between the claimed product and similar prior art products. Hence, the disclosure of the above cited patent anticipates the claimed invention. Applicants are reminded that the intended use of a product does not carry patentable weight.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-8, 45-52 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by  
Frade et al (J. Clin. Invest. 1997).

The above cited article disclosed an antibody raised against CCR2 (see page 498, left column, last paragraph, and right column, last full paragraph). Applicants are reminded that antibodies exhibit wide range of binding capability. The product disclosed in the above cited patent appears to be identical or so similar that is indistinguishable from the product claimed by the applicants. Applicants are reminded that the Patent Office does not have facilities to perform physical comparisons between the claimed product and similar prior art products. Hence, the disclosure of the above cited patent anticipates the claimed invention.

Claims 1-8, 45-52 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by  
Frade et al (J. Immunology, 1997).

The above cited article disclosed an antibody raised against CCR2 (see page 5577, left column, last paragraph). Applicants are reminded that antibodies exhibit wide range of binding capability. The product disclosed in the above cited patent appears to be identical or so similar that is indistinguishable from the product claimed by the applicants. Applicants are reminded that the Patent Office does not have facilities to perform physical comparisons between the claimed product and similar prior art products. Hence, the disclosure of the above cited patent anticipates the claimed invention.

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Claims 1-8, 45-52 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Lind et al (WO 97/31949, 9/4/1997).

The above cited patent meets the broad limitations of the claims (see the claims). The claims are directed to a product. The product disclosed in the above cited patent appears to be identical or so similar that is indistinguishable from the product claimed by the applicants. Applicants are reminded that the Patent Office does not have facilities to perform physical comparisons between the claimed product and similar prior art products. Hence, the disclosure of the above cited patent anticipates the claimed invention. Applicants are reminded that the intended use of a product does not carry patentable weight.

No claims are allowed.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ali R. Salimi whose telephone number is (703) 305-7136. The examiner can normally be reached on Monday-Friday from 9:00 Am to 6:00 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for this Group is (703) 305-7401.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Ali R. Salimi

9/18/2000

*Ali R. Salimi*  
ALI R. SALIMI  
PRIMARY EXAMINER